

REMARKS

Pages 8 and 9 of the specification has been amended to correct the typographical errors noted by the Examiner.

The claims of record have been amended to further define applicant's structure and to distinguish the same from the prior art cited by the Examiner.

More specifically, Claim 1 has been amended.

Claims 5, and 8-10 have been cancelled.

Claims 1-4, 6 and, as amended, remain in the application.

The Examiner rejected the claims in the application as being unpatentable over the reference the J. Boucher (1,452,410) in view of the reference to Standley (4,075,820).

Reconsideration of the rejection is respectfully requested.

The Examiner stated that Boucher discloses an apparatus comprising:

“a support 48-50 for the container 3 wherein the container is supported thereon with the finish of the container extending in a direction away from the support;

a chuck body 52 for holding a closure for application to the finish of the container, the chuck body including a closure retaining cavity (the area under the cap holder 51) wherein a portion of the closure extends beyond the cavity (figure 3);

means 57 for effecting movement of the chuck body toward and away from the support to enable the chuck body and a closure to be positioned on the finish of a container disposed on the support;

closure roller forming tooling 38 mounted for selective movement to contact the portion of the closure extending beyond the cavity of the chuck body; and

means 16-18 for effecting relative rotation of the support and the chuck body to permit the closure roller tooling to crimp the closure into intimate sealing relation with the finish of the container.”

The Examiner concluded that the reference to Boucher discloses the claimed invention except for an associated opening in the chuck body.

The reference to Standley has been cited to show the element which the Examiner stated was missing from the primary reference to Boucher.

More specifically, the Standley reference is cited to show an apparatus comprising a chuck 13 that has an associated opening 65 to accommodate the fitment 73 of closure 51 (Figures 3 and 5).

The Examiner then concludes that:

“Therefore, it would have been obvious to one having ordinary skill in the art, at the time the applicant’s invention was made, to modify the chuck in Boucher’s apparatus by incorporation the chuck with an associated opening as taught by Standley for the accommodation of the fitment on the cap (column 3, lines 44-46).

The modified Boucher (and Standley) further disclose: the container’s support includes a rotatable plate 48; the chuck body is cylindrical in shape; the chuck body is provided with a hollow interior portion and includes means to militate against the movement of the closure (Boucher, figures 2 & 3) and fitment (Standley, figures 3 and 5); the closure and fitment includes an inwardly extending shoulder (Standley, figure 2); the associated opening in the form of a slot; the slot extends parallel with the longitudinal axis of the chuck body; and the slot is provided an opening to guide the reception of the fitment of the closure into the slot (Standley, figures 3 and 5).”

Rejections based on obviousness under 35 USC 103 are difficult. The combining of references in such rejections is subjective and is the heart of obviousness analysis. The Federal Circuit has stated that under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. In accordance with this rule, an Examiner imposing the obviousness rejection must articulate a rationale by which a person of ordinary skill in the relevant art would have been motivated to combine the references to arrive at the claimed invention.

In the instant case, the applicant sought to solve a particular problem in the application of a closure containing a bulky fitment to a container. Prior to the invention sought to be protected, the application of a closure and fitment combination, as illustrated in the applicant’s drawings, was accomplished through a series of sequential steps. Obviously, this procedure was time consuming and expensive. Applicant’s mechanism as set forth in the application is able to achieve the desired task in a single step, thereby reducing time and cost. These objectives are typically achieved by the unique

combination of structural features, as now are clearly and distinctly defined in the claims of record, as amended.

The applicant's mechanism for achieving the desired objectives includes the following elements. Initially, a container to be fitted with a closure and associated fitment, is positioned on the rotatably mounted support plate 56 of the mechanism. The closure and associated fitment, including an axially extending discharge line 44, are disposed within the uniquely designed chuck 38. The hollow interior of the chuck 38 is provided with a profile to receive and hold the closure or ferrule, and an elongate slot to receive and guide the discharge line 44 of the associated fitment. The discharge line 44, as will become manifest hereinafter, must be guided to a position which will assure that it will not become entangled with adjacent elements of the mechanism during the axial rotation of the chuck body 44 and the closure and fitment.

In operation, the chuck 44 is caused to be rotated, while the profile wheel 22 is moved into contact with the downwardly depending edge portion of the closure or ferrule 40. Rolling contact between the wheel 22 and ferrule 40 and the associated container 10 causes the lower edge of the ferrule to be roll formed creating an intimate sealing relation between the ferrule and the finish of container. As the roll forming operation is carried out, it will be noted that the body of the discharge tube 44 of the fitment is guided into the elongate guide slot 52 and thereby able to rotate in unison with the chuck body and the container caused to rotate around the longitudinal axis of the chuck body and the container.

In the primary reference to Boucher, on the other hand, the container 3 is supported on a table 48 which is adjustable in height, but is not rotatable, as suggested by the Examiner. The table 48 is carried on a spindle 49 which projects through bearings 50 in the base and is adapted for linear, but not rotational movement. An array of three pivotally mounted opening wheels 38 are pivoted to contact the finish of the container 3 while, at the same time, are caused to rotate about the longitudinal axis of the container to effect the spinning of the cap onto the container.

It will be appreciated that the reference to Boucher does not disclose applicant's invention, except for an associated opening in the chuck body, as alleged by the Examiner.

The reference to Standley was cited to show a chuck 13 having an associated opening 65 to accommodate the fitment 73 of the closure 51.

It was the considered conclusion of the Examiner that it would have been obvious to one skilled in the art, at the time applicant's invention was made, to modify the chuck in Boucher's apparatus by substituting the chuck with a chuck having an associated opening as taught by Standley for the accommodation of the fitment on the cap.

In order for the Examiner to combine the teachings of the Standley reference with the teachings of the Boucher reference, there must be some suggestion or incentive to do so. In accordance with this rule generally referred to as prima facie obviousness, the Examiner must articulate a rationale by which a person of ordinary skill in the relevant art would have been motivated to combine the references to arrive at the claimed invention. The Examiner bears the burden of establishing prima facie obviousness by preponderance of the evidence.

The Boucher and Standley references are from different metal forming arts, Boucher (roll forming) and Standley (spin welding), and are silent as to any suggestion or motivation for combining the teachings. The combined structure, as claimed, came from the applicant. The Examiner cannot employ hindsight to effect the combination. While the motivation to combine elements found in the prior art do not have to be the same as applicant's motivation, it is submitted that the references are completely lacking in setting forth any motivation whatsoever.

Accordingly, it is submitted that the Examiner has failed to prove prima facie obviousness. Therefore, it is requested that the Examiner reconsider and withdraw the rejection of Claims 1-10 based on obviousness.

From still another viewpoint, it is submitted that, as combined, the references do not teach the claimed invention. The primary references to Boucher teaches a machine for capping bottles wherein the container 3 is maintained stationary and an array of spinning wheels 38 is caused to be rotated about the longitudinal axis of the container 3 during the capping operation.

The applicant's mechanism is distinctively different. The container 10 and the chuck body 38 of applicant's mechanism are caused to rotate about the axis of the finish of the container during the linear inward movement of the roller forming tooling including the profile wheel 22.

Since the chuck body 52 and the container 3 of Boucher are not both rotated, it is submitted that Claim 1, the only independent claim of record, recites distinguishing structure. More specifically, Claim 1, as amended, now recites

“closure roller forming tooling mounted for selective linear movement toward and away from said chuck body to contact the portion of the closure extending beyond the cavity of said chuck body; and means for effecting rotation of said chuck body and the associated container relative to said closure roller forming tooling to permit said closure roller forming tooling to crimp the closure into intimate sealing relation with the finish of the container and permitting unimpeded rotation of the fitment and discharge line about the longitudinal axis of said chuck body.”

It is submitted that Claim 1, as amended, properly defines applicant's structure and distinguishes the same over the references.

Accordingly, reconsideration of the rejection based on Section 103 is respectfully requested.

The Examiner discussed the relevant of the combination of references in respect of other features set forth in the depend claims 2-10. Since it is believed that the independent claim 1 is patentably distinct, the dependent claims are considered to be likewise patentable.

Should the Examiner consider that any additional or difference language would be desirable, it is requested that a telephone interview be conducted in an endeavor to expedite the prosecution of the application.

Since the application is in condition for allowance, an early Notice thereof is respectfully solicited.